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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

UKRAINE

1. The Committee considered the fourth periodic report of Ukraine (CCPR/C/95/Add.2) at its 1418th to 1420th meetings, on 11 and 12 July 1995 (see CCPR/C/SR.1418 to 1420) and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the fourth periodic report of Ukraine and views with satisfaction the cooperative attitude of the delegation in engaging in a frank and constructive dialogue with the Committee. The Committee appreciates the fact that the report did not conceal difficulties encountered by the State party in implementing the Covenant. However, those difficulties were described in very broad terms, and, without describing the steps envisaged by the State party to overcome them. Furthermore, the report did not provide sufficient information on the implementation of the Covenant in practice. The additional information provided in the oral replies given by the delegation to the questions posed and comments raised by the Committee members have enabled the Committee to gain a clearer picture of the overall situation in the country, and especially as to Ukraine's approach to compliance with the obligations undertaken under the Covenant.

[1] At its 1440th meeting (fifty-fourth session), held on 26 July 1995.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes that it is necessary to overcome vestiges of the totalitarian past and that much remains to be done to strengthening democratic institutions and respect for the rule of law. In this connection, the Committee notes that the Government's efforts in restructuring the legal system and endeavours to better implement the Covenant have been hampered by lacunae in the national legislation as well as by a continuing resort to a large number of outdated - albeit still in force - laws of the former régime, many of them being incompatible with corresponding provisions of the Covenant. The Committee also notes that extremist and discriminatory attitudes are emerging in the country that are not conducive to the full promotion and protection of human rights. In addition, this period of transition to a market-oriented economy has been marked by severe economic and social difficulties.

C. Positive aspects

4. The Committee expresses its satisfaction as to the fundamental and positive changes which have recently taken place in Ukraine. These changes will create a better political, constitutional and legal framework towards the full implementation of the rights enshrined in the Covenant.

5. The Committee welcomes the fact that, through the adoption of the Act on the Effect of International Agreements on Ukrainian Territory, in December 1991, and of the Act on Ukraine's International Treaties, in December 1993, international treaties ratified by Ukraine are now automatically part of the domestic legal order. The recognition by Ukraine of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol to the Covenant and its willingness to adopt appropriate procedures to implement the Committee's views without delay is of particular importance for the effective implementation of the Covenant.

6. The Committee welcomes the many other recent legal developments in Ukraine and the present progress in the transition towards democracy and pluralism. In general, the Committee is encouraged by the adoption of the Act on Provisional Detention, in June 1993, and of the Decree of the Ukrainian Cabinet on Programmes for Bringing up to World Standards the Conditions of Detention, in January 1994, which take into account the United Nations Standards Minimum Rules for the Treatment of Prisoners. The Committee also welcomes the adoption of the Acts on the Ukrainian Public Prosecutor's Office, in November 1991, the Legal Profession, in December 1992, the Status of Judges, in December 1992, and the Self-Governance of the Judiciary, in February 1994, aimed at strengthening the independent status of the judicial system and improving judicial guarantees for individuals.

7. The Committee also notes the adoption by the Government of Ukraine of the 1991 Act on Freedom of Conscience and Religious Organisations, of the 1993 Acts on Information and

on Printed Media, of the 1993 Act on Television and Radio Broadcasting, and of the Act on Public Association of Citizens. The adoption by Ukraine of the Act on Environmental Protection in 1991, along with special provisions in the Penal Code establishing liability for the preparation, processing or selling of radiation-contaminated foodstuffs or other products and their accession to the Nuclear non-Proliferation Treaties are also a welcomed development.

8. The Committee further notes the adoption by the Supreme Council of Ukraine of the 1991 Declaration of Rights of the Nationalities of Ukraine, which was given legal force through the Act on National Minorities in 1992.

9. The Committee takes note with appreciation of the confirmation by the delegation that victims of past human rights violations are entitled to compensation. It further welcomes the efforts initiated by the Government of Ukraine to encourage and facilitate the return of minorities displaced by the Soviet régime and especially the resettlement in the Crimea of the Crimean Tartars.

D. Principal subjects of concern

10. The Committee is concerned by the continuing applicability in Ukraine of a Constitution which does not provide guarantees and recourse procedures in full conformity with the Covenant. Furthermore, it has not been made sufficiently clear during the consideration of the report whether, under the law and in the practice of the courts and administrative authorities, provisions of the Covenant are systematically applied in precedence to a conflicting provision to domestic law.

11. The Committee expresses its concern about actual cases of discrimination against women, and, in general, the persistence, in a climate of economic and social difficulties, of gender disparities in practice with regard to such issues as equal pay, the equitable participation of women in the conduct of public affairs and in the economic, social, and cultural life of the country. The State party has not yet adopted effective measures to overcome attitudes based on traditional roles which hinder equality between men and women. Additionally, the Committee regrets the high level of family violence within the country and recalls that the Covenant requires States parties to implement measures of protection.

12. The Committee expresses its deep concern about the current trend in Ukraine to impose and carry out an increasing number of death sentences, and about inhumane circumstances in which those sentences are carried out. It recalls that under article 6 of the Covenant, a sentence of death may be imposed only for the most serious crimes.

13. The Committee is concerned that the guarantees contained in articles 7, 9, 10, and 14 of the Covenant are not fully complied with. In particular, it is concerned that torture and ill-treatment of persons committed by members of the police and other security forces continue to be reported, particularly to the Public Prosecutor's Office. In this regard, it is concerned that the right to personal security may be restricted without any involvement of a judicial body. The Procurator's functions during th investigation process as well as throughout the trial do

not ensure the minimum requirements contained in articles 9 and 14 of the Covenant. Furthermore, cases of administrative detention, in particular of vagrants, denial of access of detainees to legal counsel and long periods of pre-trial detention are matters of great concern.

14. The Committee is also concerned at the conditions in places of detention, whether in prisons or curative labour establishments, which do not comply with article 10 of the Covenant or other international standards. Prison overcrowding is a further matter of concern to the Committee.

15. The Committee expresses concern that the independence of the judiciary has not yet been ensured. In this connection, it regrets that the Constitutional Court, which is to be established under the Act on the Constitutional Court of June 1992, has not yet been set up. The Committee is further concerned by the very long delays in the administration of justice, which are not in conformity with the requirements of both articles 9 and 14 of the Covenant, and notes in that regard that the judicial system in Ukraine cannot be efficient until there is a sufficient number of well-trained and qualified judges and lawyers. The absence of special provisions for juvenile offenders is also a matter of concern.

16. The Committee is further disturbed by continuing obstacles to freedom of movement in Ukraine and in particular by the legal provisions which allow for the rejection of passport applications from holders of State secrets. The requirement of exit visas and the persistence of internal passport, are unacceptable and incompatible with article 12 of the Covenant.

17. The Committee expresses its concern that, although Ukraine had adopted a domestic refugee law in December 1993, currently no concrete measures have been taken to implement this law, or to establish a refugee determination procedure for asylum seekers in Ukraine.

18. The Committee expresses concern arising from the information in the report, corroborated by cases brought to its attention, that there are incidents and situations which may be conducive to acts of discrimination on ethnic, gender, religious, linguistic or property grounds. The Committee regrets that appropriate steps have not yet been taken by the authorities to resolve those difficulties and, in particular, to prevent and suppress advocacy of national, racial or religious hatred in conformity with the requirements of article 20 of the Covenant. This situation is particularly alarming in that it may undermine harmonious relations with minorities. In that regard, the Committee regrets that the definition of minorities under the Declaration of the Rights of the Nationalities of Ukraine does not conform fully with article 27 of the Covenant, which grants protection to persons belonging to all ethnic, religious or linguistic minorities, and not only to those belonging to "national" minorities. Lastly, the Committee notes with regret that measures have not yet been taken to grant automatically Ukrainian citizenship to Crimean Tartars who have returned to Crimea.

E. Suggestions and recommendations

19. The Committee recommends that the constitutional reform presently under way be accelerated in order to ensure the adoption and implementation of the new Constitution, and that the text of the Covenant be taken into account in that regard. In drafting new legislation affecting human rights, attention should systematically be paid to the establishment of effective

guarantees for the safeguard of civil and political rights. In that regard, the authorities may avail themselves of the advisory services and technical cooperation programmes developed by the United Nations Centre for Human Rights.

20. The Committee urges the Government to set up an independent body, such as a human rights Ombudsman, to monitor the implementation of the law in conformity with the obligations under the various human rights instruments to which Ukraine is a party, and to receive complaints by individuals.

21. The Committee recommends that the State party review and include information in its next periodic report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the first Optional Protocol to the Covenant, also bearing in mind the obligations under article 2 of the Covenant.

22. With respect to the rights of women, the Committee believes that affirmative measures should be taken to strengthen their participation in the political, economic, and social life of the country, as well as positive measures to ensure effective protection against domestic violence.

23. The Committee recommends that Ukraine study measures to limit the categories of crimes punishable by death to the most serious offences, in conformity with article 6 of the Covenant, with a view to its prospective abolition and to make when appropriate more extensive use of the rights of commutation or pardon.

24. The Committee emphasises the need for greater control over the police. There should be intensive training and educational programmes in the field of human rights aimed at law-enforcement officials. Steps should be taken to strengthen recourse procedures for victims of police abuse and detained persons. Adequate follow-up should be ensured to reports of such abuse by thorough investigations and appropriate penal and administrative sanctions. Prison conditions should be brought into compliance with article 10 of the Covenant and with the United Nations Standards Minimum Rules for the Treatment of Prisoners.

25. The Committee recommends that, in order to ensure the independence and impartiality of the judiciary, as well as the confidence of the individuals in the proper administration of justice, further steps be taken to speed up and complete the reform process. Measures for juveniles should be appropriate to their needs and status. Furthermore, vigorous efforts should also be made to encourage a culture of independence among the judiciary itself and to establish a well-trained and independent legal profession. A first priority should for instance be to adopt a law containing all safeguards set forth in the Covenant.

26. Existing provisions limiting or restricting the exercise of the right to freedom of movement, including the requirements for internal passport, as well as the legal provisions relating to holders of State secrets, should be reviewed to bring the legislation fully in conformity with article 12 of the Covenant.

27. The Committee recommends that Ukraine undertake to implement its domestic refugee law of December 1993, and in this connection, that it seeks assistance and advice from relevant international organisations including the Office of the United Nations High

Commissioner for Refugees.

28. The Committee expresses the wish, that vigorous measures be taken to give full implementation to article 20 of the Covenant.

29. The Committee welcomes the publication of the report in Ukraine and the Government's intention to disseminate the record of the dialogue. It emphasises that the text of the Covenant and the Optional Protocol be widely publicised in the languages spoken in Ukraine, so that the public be made fully aware of the rights enshrined in the provisions of these instruments. It also recommends that education in human rights and democracy be included in school and university curricula and that its comments be widely disseminated and incorporated into the curricula of all human rights training programmes organised for law-enforcement officials and administration officers.